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August 9, 2010

***Via Electronic Filing***
Hon. Kathryn C. Ferguson, U.S.B.J.
United States Bankruptcy Court
402 East State Street
Trenton, New Jersey 08608

Re: In re. Shalom Torah Centers
Case No. 10-15444(KCF)
**AVI CHAI FOUNDATION'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY AS TO 14 AMBOY ROAD, MARLBORO, NEW JERSEY**
**RETURN DATE: AUGUST 16, 2010 AT 10:00 A.M.**

Dear Judge Ferguson:

This law firm represents Amboy Bank f/k/a Amboy National Bank ("Amboy"), a secured creditor in the above-referenced bankruptcy case. Avi Chai Foundation ("Avi Chai") has filed a Motion for relief from the automatic stay with respect to real property known as 14 Amboy Road, Marlboro, New Jersey (the "Property") pursuant to Section 362(d)(1) of the Code, which is returnable before Your Honor on August 16, 2010 at 10:00 a.m. Please accept this letter memorandum in lieu of a more formal brief in opposition to Avi Chai's Motion.

## PRELIMINARY STATEMENT

Avi Chai has filed a Motion for relief from the automatic stay with respect to the Property pursuant to Section 362(d)(1), as it submits that the Debtor, Shalom Torah Centers ("Shalom Torah") has failed to make post-petition payments on its loan with it which is secured by the Property, and as a result cause exists to grant its Motion. However, even if Shalom Torah has failed to make post-petition payments, Avi Chai is adequately protected as there is a sufficient equity cushion in the Property with respect to Avi Chai's second mortgage in the amount of $2,424,285.39. Accordingly, as Avi Chai is adequately protected, there is no basis for relief from the automatic stay pursuant to Section 362(d)(1) for cause.

## STATEMENT OF FACTS

Amboy relies on the Certification of Cyndi Bleier, Esq. ("Bleier Cert."), General Counsel and Vice President of Amboy, submitted simultaneously herewith with respect to the facts of the within matter as they relate to the within Motion, which, along with the Appraisal attached thereto, are incorporated by reference herein.

## LEGAL ARGUMENT

## AVI CHAI IS NOT ENTITLED TO RELIEF FROM THE AUTOMATIC STAY PURSUANT TO SECTION 362(d)(1) OF THE BANKRUPTCY CODE FOR CAUSE

In the within bankruptcy case, Avi Chai is moving for relief from the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code for cause, as it submits that Shalom Torah has failed to make post-petition payments to it during this case.

Generally, the decision whether to modify, condition, or annul the bankruptcy stay under Section 362(d) is within the discretion of the bankruptcy court. See Matter of Holtkamp, 669 F.2d 505 (7th Cir.1982); In re Shariyf, 68 B.R. 604 (E.D.Pa.1986); In re Colonial Center, Inc., 156 B.R. 452, 459 (Bankr.E.D.Pa.1993). The determination is made by examining the totality of the circumstances. Matter of Baptist Medical Center of New York, Inc., 52 B.R. 417, 425 (E.D.N.Y.1985), aff'd, 781 F.2d 973 (2d Cir.1986); Colonial Center, 156 B.R. at 459.

Section 362(d) allows a creditor to attempt to strike a balance between its rights and the debtor's need for breathing room in order to rehabilitate or liquidate in an orderly manner. See generally Community Federal Savings and Loan Association v. Craghead (In re Craghead), 57 B.R. 366, 369 (W.D.Mo.1985).

Relief from the stay under § 362(d)(1) may be granted for "cause, including the lack of adequate protection of an interest in property of such party in interest." The party seeking relief from the stay has an initial burden to demonstrate cause for relief. In re Ward, 837 F.2d 124, 128 (3d Cir.1988); In re Purnell, 92 B.R. 625, 631 (Bankr.E.D.Pa.1988). This follows from the principle that a party seeking to alter the status quo has some initial burden to justify the relief sought. See generally In re Fries, 68 B.R. 676, 684-85 (Bankr.E.D.Pa.1986).

Courts have concluded that evidence of a debtor's post-petition default in mortgage payments meets the mortgagee's initial burden of production in establishing "cause" for relief under Section 362(d)(1). E.g., In re Skipworth, 69 B.R. 526 (Bankr.E.D.Pa.1987).

In the present matter, Avi Chai has verified that the Debtor has failed to make post-petition payments to it since the filing of Shalom Torah's bankruptcy petition, thus it has met its initial burden in establishing cause.

Once the movant meets its burden, the burden then shifts to the debtor opposing the relief to establish the absence of "cause." 11 U.S.C. § 362(g). See generally Nazareth National Bank v. Trina-Dee, Inc., 731 F.2d 170, 171 (3d Cir.1984). The debtor may do this by demonstrating that the movant is adequately protected.[1] In re Dupell 235 B.R. 783, 789 (E.D.Pa. 1999). In determining whether a secured creditor's interest is adequately protected, most courts engage in an analysis of the property's 'equity cushion'-the value of the property after deducting the claim of the creditor seeking relief from the automatic stay and all senior claims. Nantucket Investors II v. California Fed. Bank (In re Indian Palms Assocs.), 61 F.3d 197, 207 (3d Cir.1995).

In the present matter, pursuant to the Appraisal[2], the total value of the Property is $5,200,000.00. Amboy has a secured claim under Loan No. 853700, which is secured by a first mortgage lien on the Property in the amount of $2,163,214.61 as of February 25, 2010. See Claim No.57 of Amboy Bank incorporated herein by reference. Avi Chai has a second mortgage lien on the Property in the amount of $612,500.00. See Claim No. 2. While Amboy also has a third mortgage on the Property, that lien is not relevant for the purposes of determining whether there is an equity cushion in the Property for Avi Chai.

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[1] As Amboy Bank has a first and third mortgage lien on the Property and is a secured creditor in this case, it has standing to object to the within Motion notwithstanding that it is not the debtor.

As a result, there is an equity cushion for Avi Chai's second mortgage with respect to the Property in the amount of $2,424,285.39. As there is a significant equity cushion, Avi Chai is adequately protected with respect to the Property. Accordingly, as Avi Chai is adequately protected and as it has no other basis for its Motion, there is no cause for relief under Section 362(d)(1) of the Bankruptcy Code.

## CONCLUSION

Based upon the above and the papers submitted in opposition thereof, Avi Chai's motion for relief from the stay with respect to the Property must be denied.

Respectfully yours,

HILL WALLACK LLP
/s/ Michael Kahme
Michael Kahme

cc: All parties electronically filed
Solomon Rubin, Esquire (via electronic notice)

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[2] All capitalized terms herein shall have the same meaning as defined in the Certification of Cyndi Bleier.